

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,
Plaintiff

21-CR-6097

Vs.

STEPHEN REED PATTISON
Defendant

Rochester, New York
May 23, 2022
2:30 p.m.

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TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE DAVID G. LARIMER
UNITED STATES DISTRICT JUDGE

U.S. ATTORNEY'S OFFICE
BY: BRETT A. HARVEY ESQ.
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Appearing on behalf of the Plaintiff

FEDERAL PUBLIC DEFENDER.
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P R O C E E D I N G S

* * *

3 THE CLERK: The Honorable David G. Larimer
4 presiding. You may be seated. United States of
5 America versus Stephen Reed Pattinson, 21-cr-6097.

6 THE COURT: Good afternoon all.

7 MR. SLAWINSKI: Good afternoon, Judge.

8 MR. HARVEY: Good afternoon, Your Honor.

9 (There was a discussion off the record.)

10 THE COURT: Okay. So Mr. Slawinski, Mr.
11 Harvey, Mr. Pattinson, good afternoon. This matter is
12 on for sentencing today. Based on Mr. Pattinson's
13 plea back on November 8 to Count One of the indictment
14 charging a firearms offense, possession of a firearm
15 by a prohibited person, involved two firearms a .30-06
16 rifle and a 12 Gauge shotgun. These will be discussed
17 in a minute. These were found after a search warrant
18 in a bedroom of your home in Hilton, New York. By
19 statute such an offense carries a potential sentence
20 of up to ten years in prison.

21 There was a thorough presentence -- excuse
22 me, plea agreement. A plea was entered pursuant to
23 the plea agreement, and the factual basis in this case
24 unlike some others took two and a half pages of the
25 plea agreement, and I've reviewed the plea agreement

1 but it sets forth clearly that Mr. Pattinson was
2 convicted of a crime called domestic assault in the
3 second degree in Missouri. He received a three year
4 jail term there, was on parole; in fact, was a parole
5 absconder when this event occurred. So that's the
6 felony conviction that makes this possession of a
7 firearm illegal.

8 As I mentioned, he possessed the two
9 firearms at his home in Hilton. Appears from the
10 factual basis that the firearms at his request were
11 delivered to him by Mr. Oshier and another individual.
12 The factual basis indicates the several efforts Mr.
13 Pattinson made to obstruct justice by attempting to
14 make it look like others possessed the firearms. He
15 approached Ms. Pfenninger and Mr. Oshier to give false
16 statements, create false affidavits, and this was an
17 attempt to obstruct justice. Part of this scheme
18 which is set forth in the factual basis was that Mr.
19 Pattinson acknowledged that as a convicted felon he
20 could not possess firearms but that the other two who
21 had not been convicted felons would not get into
22 trouble for possessing the guns.

23 The Court did order a full presentence
24 report and I've received one, a very thorough report
25 which was revised on January 21 of this year. There

1 are no surprises relative to the guideline
2 calculation. The probation officer determined that
3 the base offense level for this possession of weapons
4 under 2K2.1a4A provides for a higher offense level
5 because the felony involved that prohibited Mr.
6 Pattinson from possessing weapons was a crime of
7 violence. So that base offense level was 20 and the
8 plea agreement the parties agreed under 3C1.1 of the
9 guidelines there should be a two point enhancement for
10 obstruction of justice. Mr. Pattinson did get the
11 benefit of a three point reduction because he accepted
12 responsibility and pleaded guilty. So the net is that
13 the guideline calculation for the criminal history for
14 there are of course six sentencing ranges, one through
15 six. Mr. Pattinson is at not the mid range but just
16 above the mid range at a level four. Therefore the
17 sentencing guidelines are 46 to 57 months. That's the
18 same range that as I say was anticipated by the
19 parties in the plea agreement, so there's no surprise
20 in that respect.

21 Of course, as the parties know, the
22 Government has moved for the Court to impose a
23 sentence higher than the guidelines. That motion was
24 filed December 20, Docket Number 33. Mr. Slawinski
25 has filed a response to that motion recently on April

1 6. I've reviewed them all carefully, but before we
2 deal with discussion about that, Mr. Slawinski also
3 filed back in early January objections to the items in
4 the presentence report, and I think we should deal
5 with that first.

6 I guess in the Government's motion for an
7 upward departure, the Government responded to that --
8 those objections as well. So I think, Mr. Slawinski,
9 as you know that the rules seem to require me to make
10 sure on the record the obvious, that you and your
11 client have received the presentence report.

12 MR. SLAWINSKI: Yes, Judge.

13 THE COURT: All right. And Mr. Pattinson, I
14 must ask you directly, did you receive the report and
15 review it with your lawyer?

16 MR. PATTINSON: Yes, sir.

17 THE COURT: All right. I think at the risk
18 of over -- well, the objections are really two in
19 number. Mr. Slawinski, you've objected basically to
20 all of the Facebook postings which were Paragraphs 38
21 to 77 as well as Paragraph 20. You also objected to
22 Paragraphs 88, 90 to 93 which talks about what I'll
23 call the obstruction of justice conduct on the part of
24 Mr. Oshier and Ms. Pfenninger, and then you do
25 specifically make a sentencing recommendation and that

1 is that the Court stick to the 46 to 57 month
2 guideline range.

3 So in reviewing your motion, it seems that
4 the -- really the singular basis for the objection was
5 that all of the Facebook stuff, and there are multiple
6 paragraphs, that in your view it's all irrelevant to
7 the crime that Mr. Pattinson pleaded to, that is
8 possession of these two guns. Is that the essence of
9 it?

10 MR. SLAWINSKI: Correct, Judge.

11 THE COURT: All right. And we'll deal with
12 the matter relating to the activities of Mr. Oshier
13 and Ms. Pfenninger in a minute but -- so there are no
14 other objections?

15 MR. SLAWINSKI: That's correct, Judge.

16 It's --

17 THE COURT: Keep your voice up a little bit.

18 MR. SLAWINSKI: Oh, sorry.

19 THE COURT: That mic seems -- okay.

20 MR. SLAWINSKI: The postings by Mr.
21 Pattinson were done at least two weeks before his
22 arrest and -- or I'm sorry. At least two weeks before
23 the finding of the firearms. It's our position that
24 the postings and the messages do not relate to his
25 actual crime of being a felon in possession of two

1 firearms.

2 THE COURT: Okay. Well, I just was trying
3 to determine what the objection is and then I was
4 going to let you -- give you a chance to argue it.
5 You've already argued it. Anything else you wish --
6 your papers thoroughly set forth your argument, but
7 you certainly have an opportunity to say anything more
8 you'd like about that.

9 MR. SLAWINSKI: No, and that is my argument,
10 Judge.

11 THE COURT: Okay.

12 MR. SLAWINSKI: I'll note that the initial
13 presentence report that was prepared did not have the
14 paragraphs relating to the Facebook posts or the
15 social media posts and then the second one did. I
16 think it came on a day or two later, and it increased
17 the PSR I think by double. The first one I think was
18 about 17 pages and this one is 39 pages. So the bulk
19 of the PSR are Mr. Pattinson's Facebook posts and his
20 messaging on social media.

21 THE COURT: All right. Well, I acknowledge
22 the new presentence report is some 39 pages long.

23 Mr. Harvey, do you wish to be heard in
24 response to the argument that essentially I guess that
25 the Court should strike or at least not consider all

1 those Facebook comments or rants?

2 MR. HARVEY: Sure. Judge, just very
3 briefly. I did lay out in my original sentencing
4 memorandum the rational for the Court's consideration
5 of those Facebook posts as it relates to sentencing.
6 Our position is that those posts are relevant to
7 issues that are present before this Court in this
8 proceeding. Specifically, they show the defendant's
9 motive and intent in acquiring and possessing the
10 firearms, and they also show his -- and illustrate his
11 future dangerousness and his potential for recidivism
12 which are all permissible purposes for such evidence
13 to be presented at sentencing.

14 I will note that with respect to the
15 Facebook posts both in the PSR and the Facebook posts
16 and messages that are in my sentencing memorandum
17 which supplement the PSR all of those posts or
18 messages occurred during the three or four months
19 leading up to the defendant's acquisition of the two
20 firearms. So they weren't remote in time in relation
21 to when he actually took possession of the .30-06
22 rifle and the shotgun, and in fact, the one audio
23 message that is referenced in I think Paragraph 77 of
24 the PSR as included in full and the Government's
25 sentencing memorandum on Page 9 I believe where the

1 defendant refers to killing at a genocidal rate and
2 makes a reference to Josef Mengele. That conversation
3 between the defendant and Mr. Oshier occurred on the
4 day he took possession of the shotgun and the
5 ammunition. So there's temporal proximity to all of
6 these communications as they relate to the defendant's
7 motive in taking possession of those firearms and
8 ammunition.

9 THE COURT: All right.

10 MR. HARVEY: And I think with respect to the
11 future dangerousness and potential recidivism, I think
12 those are all bases for the court to consider those
13 because if you look at the defendant's criminal
14 history he has prior convictions which involve in some
15 cases racial animus, in other cases actual violence
16 and in other cases threats to kill. So I think this
17 is all part of what this Court should be able to
18 consider in determining those issues.

19 THE COURT: Mr. Slawinski, do you want to
20 speak further about the paragraphs relating to Mr.
21 Oshier and Ms. Pfenninger?

22 MR. SLAWINSKI: Yeah, Judge. Just to state,
23 you know, we're not objecting to the attempted
24 obstruction as it relates and as it's stated in the
25 presentence report but we don't have any information

1 -- personal information of what Ms. Pfenninger and Mr.
2 Oshier did after they talked to Mr. Pattinson. It's
3 my understanding that there was an affidavit that was
4 procured by Ms. Pfenninger and Mr. Oshier, but that
5 was never submitted to the police.

6 MR. HARVEY: Judge, I'm going --

7 THE COURT: Mr. Harvey?

8 MR. HARVEY: Just on that note, Judge, I
9 would note that Paragraph 5K of the plea agreement
10 does include some of the facts that are set forth in
11 the paragraphs from the PSR, so the defendant has
12 effectively already admitted to some of the conduct by
13 Ms. Pfenninger and Mr. Oshier as it relates to the
14 obstruction. So there's probably a mootness argument
15 there as well. So he's really already admitted the
16 essential facts for finding that enhancement applies.

17 THE COURT: Yes. Doesn't seem to be
18 anything new about the paragraphs in the plea
19 agreement -- or on the presentence report since it was
20 covered in the plea agreement.

21 MR. HARVEY: Right, in large part.

22 THE COURT: Well, Mr. Slawinski, I'm going
23 to deny your motion to strike these paragraphs. I
24 think they are relevant in several respects. First of
25 all, the well known statute Section 3661 which covers

1 sentencing does provide that no limitation shall be
2 placed on the information concerning the background
3 character and conduct of a person convicted in the
4 United States and may be received and considered for
5 the purpose of imposing an appropriate sentence.
6 That's sort of a baseline principle. In fact, much of
7 it doesn't have to be technically admissible if it has
8 to have some indicia of reliability, but I think these
9 Facebook statements are relevant for several purposes.
10 There's many references to getting firearms. I
11 counted about seven; Paragraph 51, 58, 59, 62, 65, 74
12 were references by Mr. Pattinson with others to get
13 guns and for sort of a particular purpose. It wasn't
14 to go duck hunting either. It was to be prepared in
15 references to this holy war. So I think to the extent
16 there are two firearms offenses here, you know, if
17 someone were charged as a felon of possessing firearms
18 but he said to me, "Judge, I was just going to use
19 them to go duck hunting with my nephew, "that seems to
20 me to be far different from why these weapons were
21 procured.

22 Second, there were admission on some of
23 these Facebook statements or rants, in Paragraph 56
24 specifically where he admits that he can't possess a
25 firearm. One of his cohorts asked him that and he

1 said no, I can't. Also, there's a reference in the
2 Facebook Paragraph 57 which suggests Mr. Pattinson
3 didn't care much about the law or he was talking about
4 if he shot someone he didn't care about the law was
5 important.

6 As to the information about Mr. Oshier and
7 Ms. Pfenninger, Paragraphs 88 to 93, I think these
8 just corroborate and really duplicate information that
9 Mr. Pattinson agreed to in the plea agreement. It's
10 really nothing new. And I think finally all of these
11 Facebook matters, or many of them, they do express a
12 certain I would say white supremacist, racist
13 philosophy, but it references other things that I
14 think are truly germane to sentencing. I understand a
15 person can have white supremacist views and support
16 Nazi philosophy and use racist language. That's not
17 what Mr. Pattinson is being sentenced for even though
18 those statements are offensive and repugnant.

19 So I think these statements in the Facebook
20 pages they refer to many things that I think are
21 germane in the Court's ultimate decision. They refer
22 to firearms, assaults or potential assaults on the
23 protestors that were protesting during the Summer of
24 2020. They relate to the use of violence, all of
25 which I think may be factors for this Court to

1 determine in terms of the ultimate sentence. I mean,
2 the Facebook postings talk about shooting Antifa
3 people, Paragraphs 45 and 57, some reference to Mr.
4 Pattinson beating up such a person, Paragraph 48,
5 statements that we should slaughter anybody bringing
6 communism into the country, threats to kill people if
7 they came into his neighborhood presumably in Hilton
8 and statements that this just doesn't mean to fight
9 them but to shoot them, pump shells through their
10 head.

11 So I deny your request to strike those
12 because for the reason that I stated I think they're
13 relevant and within the broad scope of information the
14 Court can determine whether the sentence should be
15 within the guidelines, less than the guidelines or
16 more than the guidelines. The rules require that I
17 first off make a determination as to what the
18 sentencing guidelines are, and the plea agreement the
19 parties opined what it should be. The presentence
20 report has determined that, and I make a determination
21 that the appropriate sentencing guidelines with the
22 criminal history category four is the 46 to 51 months.

23 MR. HARVEY: Judge, I think it's 46 to 57.

24 THE COURT: What did I say?

25 MR. HARVEY: I think you said 46 to 51.

1 THE COURT: No, no. Yup. You're right. 46
2 to 57. I misspoke.

3 MR. HARVEY: Thank you.

4 THE COURT: Let me just find one other note
5 here before we proceed. As I indicated at the outset,
6 Mr. Harvey on behalf of the Government has requested
7 that the Court impose a sentence greater than the 46
8 to 57. I would just note that the plea agreement I
9 believe it was Paragraph 13 the parties agree to the
10 correctness of the guideline calculation but both
11 reserve the right to seek a sentence outside the
12 guidelines, and the plea agreement also referenced the
13 well known fact that regardless of what the guidelines
14 are the Court is not bound to accept them but the
15 Court has to make its own determination.

16 So let's get to the decision itself here.
17 I've indicated what the guidelines are. I should
18 indicate that attached to your objection to Mr.
19 Harvey's request for an upward departure you also
20 included a statement written by Mr. Pattinson, a two
21 page statement which I acknowledge receipt of. So I
22 think it's time for counsel to speak to the matter.
23 Mr. Pattinson, you also have a right to address me,
24 the sentencing judge. I have carefully reviewed your
25 letter. You don't have to make a statement, but if

1 you wish to, you can. I guess, counsel, in your
2 remarks and you both know this since you've appeared
3 before me scores of time but I think that there's a
4 statute that affects the Court's sentence and that's
5 the so-called sentencing statute, Section 3353A. Mr.
6 Harvey sort of tripped through that on his discussion.
7 And I think those sections and there are seven or
8 eight are crucial in every sentence but they certainly
9 are here. The Court is directed to look at the nature
10 and circumstances of the crime. The Court is directed
11 to look at the history including the prior record and
12 characteristics of this defendant. The Court is
13 directed to consider the need for this sentence to
14 reflect the seriousness of the offense, to promote
15 respect for law, to provide just punishment,
16 importantly to provide adequate deterrence and also
17 importantly to protect the public from further crimes
18 by the defendant. So I think that certainly tryst for
19 counsel's discussion.

20 In addition to those factors, the sentencing
21 statute also says the Court should consider and avert
22 to the policy statements of the guidelines, and that
23 suggests at least one and maybe two of the guideline
24 sections may be germane here. First is 4A1.3 of the
25 guidelines which talks about under 4A1.3A1 a standard

1 for considering an upper departure and that teaches
2 and I quote if reliable information indicates that the
3 defendant's criminal history category substantially
4 under represents the seriousness of his criminal
5 history or the likelihood that the defendant will
6 commit other crimes, an upward departure may be
7 warranted. So I think this has often been used and
8 must be used. 5K2.0 talks about whether there should
9 be some departure or reasons not sufficiently
10 considered by the framers of the guidelines. But I
11 think my focus has been on the statute, Section 3553E
12 -- A rather and 4A1.3 which talks about the standard
13 for the upward departure and there's also some
14 guidances to how the Court might examine that.

15 So I guess I would turn it over to counsel
16 at this point. Mr. Harvey, since you made the motion
17 I guess I will let you go first. Trust me, I have
18 read your paper numerous times and Mr. Slawinski's
19 response so it's not necessary to repeat everything in
20 there but you may proceed.

21 MR. HARVEY: Thank you, Judge. As Your
22 Honor noted, the Government has requested an above
23 guideline sentence of 120 months imprisonment which is
24 the statutory maximum. The Government understands
25 that that's a significant above guideline sentence,

1 basically double the range, but I think it's warranted
2 in this case, and it is not greater than necessary to
3 achieve the objective of sentencing set forth in
4 Section 3553A. As I've detailed in my sentencing
5 memorandum, that sentence from my perspective is
6 justified by the nature and circumstances of this
7 offense, this defendant's criminal history and
8 characteristics and the defendant's awful performance
9 while under supervision for previous criminal
10 convictions. We've touched upon some of that already
11 in the argument on the Facebook post, Judge, but I
12 think it's fair to say that this is a serious case.
13 It involves the illegal possession of firearms and
14 ammunition by a convicted violent felon. The history
15 of racial animus and the history of adherence to white
16 supremacist ideology. For those -- the reasons that
17 I've stated earlier the Facebook posts are important
18 in this case, although not the only thing that's
19 important but they are importantly in this case
20 because they tell this Court why the defendant took
21 position of the rifle and the shoot gun and the
22 ammunition, and as Your Honor knows, I've gone through
23 chapter and verse both in my sentencing memorandum and
24 also the PSR about the various racialized threats that
25 this defendant made over Facebook during the three or

1 four months leading up to his possession of these
2 weapons and I'm not going to repeat them here in court
3 because Your Honor is well aware of them and they
4 obviously show an aberrant ideology by this defendant,
5 but it's not for his ideology or his political beliefs
6 or racial beliefs I'm asking the Court to consider
7 those posts. It's to show why he possessed the gun
8 and to show that purpose was not defensive but was
9 offensive, and I think the best illustration of that
10 is the last Facebook message that is summarized in my
11 sentencing memorandum which is on Page 9 at the bottom
12 of Page 9, and I'm just reading a pertinent part only,
13 Judge. The part that's highlighted for the Court in
14 the memorandum, it reads as follows: "Go ahead,
15 nigger. Defund the police so I can just start fucking
16 murdering you all in a genocidal rate by fucking
17 myself. They'll be calling me the angel of death.
18 They'll be calling me the new Josef Mengele." I think
19 that shows, Judge, that this defendant contrary to
20 what was set forth in his sentencing memorandum did
21 not possess these guns or ammunition for a defensive
22 purpose only. A fair reading of that transcript, of
23 that audio message indicates that he possessed them in
24 an offensive posture and if anybody either African
25 American or Antifa related came onto his street in his

1 neighborhood he was going to kill them all. So I
2 think it's something the Court should consider very
3 strongly in determining the nature and seriousness of
4 the offense that he's pled guilty to.

5 With respect to his criminal history, as I
6 alluded to earlier, he has four prior criminal
7 convictions, one felony from 2016 and three prior
8 misdemeanors. All of them -- or excuse me, some of
9 them include aggravating factors such as the
10 following. Threats to strike and choke his girlfriend
11 and drown her to death and have someone shoot her in
12 the face. Threats to kill everyone in a house and to
13 kill himself before he goes back to prison. Others
14 involve yelling white supremacy and racial slurs and
15 ripping down a Mexican flag from somebody's personal
16 property, and another involves calling a victim a
17 racial slur and then damaging and menacing a person
18 after doing so. These convictions taken together
19 especially with the Facebook posts and messages that
20 we've discussed show this defendant's capacity for
21 violence and his willingness to commit racially
22 motivated criminal conduct, and I think it really
23 colors the background here as to why he possessed
24 these two weapons in this case illegally. And I think
25 as I mentioned earlier I think that really illustrates

1 a couple of things as it relates to the 3353A factors.
2 It illustrates this defendant's disregard for the law.
3 He shows no respect for the law in anything he does.
4 He has all of those convictions but keeps coming back
5 to the same thing, continues to espouse this ideology,
6 continues to commit criminal conduct, ignores orders
7 of the court whether it relates to parole or probation
8 in his cases. So it really shows a high level of
9 disregard for the law and a significant chance of
10 recidivism by this defendant in the future, and I
11 think that does tie into not only the 3553A factors
12 but also as Your Honor referenced Section 4a 1.3
13 relating to unrepresenting criminal history category.
14 This defendant has a criminal history category four
15 which is not the highest category, but those
16 convictions taken together with his statements about
17 his disregard for the law show that has had no
18 intention of living a law abiding life regardless of
19 what this court does. So I think it's necessary for
20 this Court to send a message to this defendant that
21 this conduct will not be tolerated going forward and
22 to impose a maximum sentence to prevent him from
23 engaging in this type of conduct in the future.

24 I will note a couple of other things, Judge.
25 In addition to the possession of a weapon and the

1 Facebook posts and messages, I think it shouldn't be
2 lost on this Court that the defendant did try to
3 obstruct justice in this case and in doing so involved
4 his girlfriend and the mother of his children in the
5 process and has put her in legal jeopardy because
6 she's charged here in federal court with offenses
7 relating to that obstruction. I think the sentencing
8 memo and PSR speak for themselves on that issue, but
9 that's an aggravating factor that should not be lost
10 on this court in determining an appropriate sentence.
11 With respect to one of the other arguments made by
12 defense counsel in their sentencing memo they tried to
13 draw parallels between this defendant and Mr. Oshier
14 who pleaded guilty to transferring a firearm to a
15 convicted felon and is facing a different sentencing
16 range for this defendant. I just wanted to clarify a
17 few things for the Court with respect to those
18 differences between the plea agreements. Mr. Oshier
19 is not similarly situated to this defendant. They're
20 completely different. Mr. Oshier has no criminal
21 history category. This defendant has a criminal
22 history category four with a high likelihood of
23 recidivism. There are differences in their guidelines
24 calculations. For example, Mr. Oshier was a base
25 offense level of 14 because that is the base offense

1 level for transferring a firearm to a convicted felon
2 while this defendant is a base level 20 due to his
3 prior violent felony conviction. In addition, Mr.
4 Oshier's plea agreement provided for a five level
5 upward departure for him based on the danger to the
6 community presented by him giving the shotgun and the
7 ammunition to the defendant knowing that the defendant
8 intended -- or wanted the firearm for the purpose of
9 among other things shooting minorities and Antifa
10 protestors.

11 And finally this defendant is getting an
12 upper adjustment for obstruction of justice based on
13 his plan to give the false affidavits to frustrate
14 this prosecution and Mr. Oshier did not qualify for
15 such an enhancement. So there is no fair comparison
16 between Mr. Oshier's plea agreement and the plea
17 agreement entered by this defendant. So Judge, unless
18 you have any further questions about my submissions or
19 my arguments I believe that the sentence we've
20 requested complies with the objectives of Section
21 3553A and is a just and appropriate sentence in this
22 case.

23 THE COURT: All right. Thank you. Mr.
24 Slawinski, as you know, you can also make a statement
25 if you wish. I have read your thorough written

1 report. Mr. Pattinson may also speak. I'll turn it
2 over to you and you can decide who goes first, I
3 guess.

4 MR. SLAWINSKI: Thank you, Judge. Judge, I
5 think first and foremost the Court needs to consider
6 the crime in this case and that crime is that Mr.
7 Pattinson possessed both a rifle and a shotgun in his
8 home in Hilton, New York. The shotgun and rifle were
9 retrieved while Mr. Pattinson had already been in jail
10 for two weeks after he was arrested for his Missouri
11 warrant and for coming back here to be with his fiancé
12 and the mother of his child who has since been born
13 since he's been in custody.

14 THE COURT: Since what? I didn't hear you.

15 MR. SLAWINSKI: Oh. The mother of his
16 child. He had a child born while he has been in
17 custody.

18 THE COURT: Okay.

19 MR. SLAWINSKI: The child is now a year and
20 a half -- almost a year and a half old. So the Court
21 should consider the crime in this case, and this is a
22 fairly common crime that you see in federal courts
23 that being a 922G. The firearms involved did not have
24 a large capacity. They were not machine guns. They
25 were not semi automatics. They were simply a rifle

1 and a shotgun.

2 The reason that Mr. Pattinson had these
3 firearms is that he knew that he was going back to
4 jail sooner or later. He knew that the Missouri
5 warrant was going to catch up with him, and he wanted
6 his fiancé, his girlfriend and their children to be
7 safe when he did that. So he did procure the weapons,
8 he admitted to that, for their safety, and he did this
9 in the Summer of 2020. As the Court will recall in
10 the Summer of 2020 there were a lot of protests in
11 Rochester about Black Lives Matter, and there were
12 people on both sides protesting and counter
13 protesting. Now, Mr. Pattinson was paying attention
14 to the protests, took part in some of the counter
15 protests and was very concerned that the violence
16 would spill over to his neighborhood in Hilton. Now,
17 whether that concerns --

18 THE COURT: Which is a long way from
19 Rochester.

20 MR. SLAWINSKI: It is. Correct, Judge.
21 There's no evidence that he went into Rochester with
22 any weapons to cause a may lay, to cause violence. He
23 was concerned about himself and his family. Now, you
24 know, his beliefs, you know, notwithstanding, you
25 know, that was his main concern, and the Court, you

1 know, could find his beliefs, his racial briefs
2 repugnant and disgusting, but still, they're protected
3 by the first amendment and should not play any part in
4 his sentence. So the text and the Facebook messages
5 and the social media posts were in themselves
6 defensive. They were not offensive, and he was
7 worried that his family was at risk while he was going
8 to be in jail.

9 The reason that he has a criminal history
10 Category Four was that -- Mr. Harvey did detail his
11 prior criminal history but he did escape. He walked
12 away from custody in Missouri to come up here because
13 he was not being given the opportunity to come up here
14 and be with his family. He had no ties in Missouri.
15 He had asked them several times so he came up here to
16 Hilton to be with his family. He put two requests in
17 and they were both denied, so he did take it upon
18 himself to come up here. He admits that and he
19 stepped responsibility for that just like he's
20 accepting responsibility for possessing the firearms.

21 Again, the firearms were found two weeks
22 after he had been arrested for the Missouri warrant,
23 and there was never any allegation that Mr. Pattinson
24 was violent during the Black Lives Matter protests,
25 that he assaulted anyone, and I think the Government

1 even state that's in their sentencing memo. There was
2 also an issue of Mr. Pattinson's address being on the
3 internet so people knew where they lived. That's
4 where Ms. Pfenninger lived with their two children.

5 So a lot of this, you know, bloomed or
6 blossomed from the racial protests and the Black Lives
7 Matter protests in 2020. It's correct that Mr.
8 Pattinson does have a criminal history category of
9 four. That is the middle of the road here. I don't
10 think that criminal history category is too low for
11 somebody like Mr. Pattinson. The Government is well
12 aware that the Court sees people with far more violent
13 crimes and priors in their past and they don't object
14 to their criminal history being too low. I think that
15 if the Court were to which we're obviously arguing
16 against it would pour gasoline on this fire on the
17 internet. It would say, you know, we're punishing Mr.
18 Pattinson for his views, for his racial views, and the
19 people who harbor those views I think would be ignited
20 by a sentence that will go above and beyond. I think
21 that they will say it will be unfair that Mr.
22 Pattinson is being sentenced that way just because of
23 his beliefs. SO the Court should consider that. The
24 Court should also consider the fact that, you know, if
25 you send Mr. Pattinson to prison and believe that he

1 is a white supremacist, that's just going to fester.
2 The longer he's in prison the more he's got to be
3 indoctrinated and he's going to come out at some point
4 even worse, and the Government hasn't offered any
5 solution as to how to deal with that because at some
6 point he will be released from prison. We think that
7 because of the 3553A factors that should be sooner
8 rather than later. I'll note that the Government is
9 asking for double what the high end of the guideline
10 sentence is here. I think that that's truly uncalled
11 for in this case, and I think a lot of it has to do
12 with Mr. Pattinson's racial animus here and not the
13 crime for the person himself. I think, you know,
14 obviously Mr. Pattinson does have a criminal history
15 but if he's placed on supervision if he were to screw
16 up or violate, you know, that would be appropriate and
17 he would receive appropriate punishment at that time,
18 but I don't think that an upward departure of double
19 the guideline -- of double the guideline range here is
20 called for.

21 I did say that Mr. Pattinson is the father
22 of two children. His newborn, who is a year and four
23 months, he just got to see recently. Ms. Pfenninger
24 the codefendant in the obstruction issue gave birth
25 shortly after Mr. Pattinson went into prison and he

1 only saw -- he's only had the opportunity to see her
2 one time. I don't think the Court should treat this
3 like any other 922G1 case. The guns at issue were not
4 being used in drug trafficking. They weren't being
5 used in a robbery. They weren't being used in a crime
6 of violence. They were simply being used to protect
7 Mr. Pattinson's girlfriend and their children. Now,
8 whether it was reasonable or not, you know, that's
9 another question, but there's no evidence to show that
10 Mr. Pattinson had any offensive -- had any offensive
11 motive in possessing these firearms.

12 So for all of those reasons, Judge, and for
13 the reasons I stated in my sentencing memo and
14 response to the Government's memo, I would ask for a
15 guideline sentence in this case. Thank you.

16 THE COURT: All right. Thank you. Mr.
17 Pattinson, you also as I've said several times have a
18 right to speak to me if you wish. You don't have to
19 because you have written a letter that I have already
20 mentioned but anything you would like to say before
21 the Court pronounces the sentence? And just keep your
22 voice up because I don't hear too well.

23 MR. PATTINSON: I would just like to
24 apologize for bringing this all in play here. I think
25 a lot of things got taken a lot further than they

1 should have and I definitely accept my responsibility
2 and stupidity for what I have done, and I apologize to
3 the Court for that.

4 THE COURT: All right. Thank you. As I
5 mentioned several times, the courts no longer can just
6 impose the sentence in their heart that they think is
7 right. Back when I started being a judge over 35
8 years ago that was the case. But now we have
9 sentencing guidelines that are supposed to grade some
10 uniformity and consistency in sentencing both for
11 those who are offenders and for the community, but
12 there are vehicles and ways that a court can either
13 adhere to the guidelines or sentence below or above
14 the guidelines. And I think the place to start as
15 both parties seem to recognize is the factors, and I
16 must say, Mr. Pattinson, in looking at those factors
17 you don't come out too well in any of them in terms of
18 the nature of the offense, the history and
19 characteristics of your background, the need to
20 provide deterrence and frankly to protect the public.

21 Dealing first with the nature of the
22 offense, a convicted felon possessing firearms is a
23 danger. Congress has said it's so dangerous that it
24 subjects you to up to ten years in prison. Your
25 lawyer and you have suggested that you obtained those

1 weapons for protection of your family. As far as I
2 know, there's no evidence that your family was
3 threatened in Hilton which is many, many, many miles
4 from where the protest occurred downtown, but if you
5 carefully look at the Facebook references that have
6 been cited by the Government and I referenced, a lot
7 of the references are to getting guns for you if
8 necessary to use and you talk about shooting people
9 and threatening to shoot people. You know, your views
10 about white supremacy and Nazi views, racist language,
11 they sort of factor in too when one considers the
12 purpose for possessing the guns. Reading the
13 Facebook, possessing those guns and obtaining them
14 seemed to relate pretty closely with objections and
15 disagreement with the protestors that were protesting
16 in various parts of the city.

17 But the next area is the history and
18 characteristics of you and that forces us to look at
19 your criminal history category which is a four, and
20 except for one prior conviction, all of them seem to
21 have demonstrated aspects of the use of violence and
22 many with the racial undertone or animus. The crime
23 that does not seem to involve that is your crime of
24 driving while intoxicated. According to the
25 presentence report, police tried to pull you over.

1 You ignored them, led them on a high speed 80 mile an
2 hour chase. Now, that might not relate to racial
3 animus, but it certainly seems to show a lack of
4 respect for the law and putting others in danger.

5 But look at some of your other records.
6 Admittedly, this was some time ago back in 2009 you
7 pleaded guilty to menacing, criminal mischief and a
8 hate crime. You received three years probation but
9 then this seems so typical of many of the things
10 you've said and done. You know, a neighbor who
11 happened to be African American complained at the
12 residence you and others were in the music was too
13 loud, and in addition to calling him nigger, you and
14 others broke his lawn furniture, throw it at his
15 house. Uncalled for. Reprehensible. You're on
16 probation and the allegations are numerous that you
17 engaged in additional conduct, in threats, engaged in
18 a threat to kill another person, failed to pay
19 restitution, failed to complete drug and alcohol
20 treatment. So that's where we start.

21 A few years later you were -- pleaded guilty
22 to criminal mischief in the fourth degree, received a
23 very modest jail time. Records there indicate that
24 you and another were walking through the Town of East
25 Rochester yelling statements about white supremacy and

1 then you approached a woman who happened to be
2 Hispanic. In addition to calling her a spic, you
3 ripped down the Mexican flag she had on her porch and
4 punched her or pushed her in the face and told her "to
5 go back to Clinton" which I assume maybe had some
6 reference to President Clinton.

7 Next, the very serious felony assault
8 conviction, domestic assault where you received a
9 three year sentence, and I almost lost count of the
10 times the violation of parole was issued, at least
11 three times, and you eventually absconded, but the
12 facts of that case also demonstrate a terrible
13 propensity for violence. Now you grabbed this
14 described as your girlfriend, choked her so that she
15 stopped breathing, threatened to drown her and then
16 when arrested yelled that he was going to have someone
17 come and shoot her in the face.

18 You didn't do too well when you were sent to
19 the Missouri facilities either. There were at least
20 eight disciplinary infractions there, many of them
21 seemed to involve fights and violence, engaging in
22 physical structure -- struggle three or four times,
23 threats, failing to comply with an order. Last
24 conviction 2019 pled guilty to menacing in the second
25 degree, a weapons charge, received a modest jail

1 sentence, but there too you were enjoying yourself as
2 well as with others at a pub in Buffalo, began using
3 racial slurs, kicked out of the pub and while outside
4 proceeded to destroy parts of an individual's --
5 presumably a friend's truck, grabbed jewelry from one
6 of the women's neck, pulled out a knife and said, you
7 know, I'm going to kill everybody in this house if I
8 go back to jail. You know, you receive points under
9 the guidelines. You know, you commit a felony, you
10 get three points. You get misdemeanor, you get one.
11 You received points for all of those except maybe the
12 earliest one, but where I think maybe the record here,
13 your criminal record of four doesn't adequately
14 reflect the seriousness of the offense is that, you
15 know, these were crimes of violence. Many of them
16 tinges of racial animus. That's different from
17 another misdemeanor, petty larceny. You know, you
18 stole ten dollars worth of food from a store, you get
19 one point, but these offenses you also get a point but
20 they seem to involve much more serious conduct and
21 frankly the likelihood that you might do something
22 again like that. There did not appear to be any
23 willingness or ability on your part to stop this
24 conduct. You know, there's a pattern here. Respect
25 for the law is another thing the Court must consider,

1 and I don't know how I can find that in your case.
2 You've been repeat violations of probation, numerous
3 violations of parole. You skipped out on parole in
4 Missouri. You did what you wanted to do. You wanted
5 to come here. 80 mile an hour flight from the
6 officers on a DWI clearly doesn't demonstrate much
7 respect for law. Statements on Facebook that you knew
8 you couldn't possess a gun but you did it anyway. You
9 know, you didn't care if it violated the law. I think
10 this sentence has to demonstrate that there must be
11 some respect for law.

12 I carefully reviewed your statement and you
13 expressed some remorse. I quote you said "I couldn't
14 believe some of the stupid crap I was saying." Well,
15 I might agree with you that it was stupid, but you've
16 done it numerous times. You claim you were just
17 talking a big game and really didn't mean any of this,
18 but you know, it's easy now that you stand before a
19 sentencing judge to have remorse and to say you're not
20 going to do it again and there was some justification.
21 Someone brought to my attention a quote which I think
22 applies to some extent here. You may not be familiar
23 with the African American -- famous African American
24 poet and play writ, author, civil rights activist who
25 actually spoke at President Clinton's inauguration.

1 My guess is that's not someone whose works you follow
2 very closely, but she's often quoted as saying the
3 following which I think applies here, especially in
4 light of your statement, and she said and I quote
5 "When somebody shows you who they are, believe them
6 the first time." When someone shows you who they are,
7 believe them the first time. And Mr. Pattinson, I
8 think you have shown us repeatedly who you are, what
9 you're capable of based on your prior record and your
10 numerous statements and rantings on Facebook. So your
11 letter on the eve of sentencing does not mitigate that
12 in my view very much at all. Violence seems to be
13 your middle name. In fact, the presentence report
14 reflects that you have a tattoo on your hand that says
15 that word, violence. So that seems to be your creed.
16 So I'm not convinced that your online threats of
17 violence against people and property were idle ones.
18 Your history includes crimes of violence, menacing,
19 hate speech, race based harassment, trespass, using
20 racial slurs, threatening to have people killed. The
21 defendant's online embrace of Nazi ideologies, threats
22 to engage in violent attacks, connection with a race
23 war, claims actually that you did assault several
24 protestors involved in the 2020 protests, strongly
25 suggest to me the likelihood that you would and could

1 offend again.

2 Certainly, the first amendment protects your
3 right to engage in such in the Court's view repugnant
4 statements that are incompatible with a democratic
5 society. They relate frankly to the likelihood you
6 might commit offenses again. Admission of your
7 beliefs may then properly be considered to the extent
8 they indicate future dangers in this courtroom that
9 mitigating evidence. In my view, sir, the factors
10 that I've discussed here they do warrant a sentence
11 above the 46 to 57 month guideline range. The
12 Government seeks the maximum sentence here. The Court
13 believes it must follow the policy statement under
14 4A1.3. There have been numerous shootings around this
15 country in the past years and many times people ask
16 the question, you know, were there any warning signs
17 or were there any red flags? I must say, sir,
18 fortunately you did not engage in such conduct, but if
19 so, the warning flags just jump out at you here in
20 terms of racial animus and prior violence. In my view
21 under 4A1.3, I think your criminal history four does
22 under represent the seriousness of your prior record
23 and the likelihood that you could commit other crimes.
24 I mentioned already, as Mr. Harvey has, your criminal
25 record which involves racially tinged violence but

1 violence -- numerous violence -- acts of violence. It
2 just seems to me, Mr. Pattinson, when things don't go
3 your way especially in view of your world view, you
4 react violently. You don't just disagree with people.
5 You call them names. You engage in violence. You get
6 upset at your girlfriend, you choke her and threaten
7 to kill her. You get upset when somebody asks you to
8 lower music, you destroy his property. You see a
9 Spanish person you don't like in East Rochester, you
10 assault her and call her names. You know, I don't
11 know why the Court and the community has to accept
12 this. You have shown who you are. You have been and
13 I think are a danger, sir. You repeatedly engaged in
14 behavior frankly of a thug. You've obtained weapons
15 illegally. I think you obtained them as part of a
16 racist agenda. You've been convicted of violent
17 crimes in the past, not just non violent crimes. You
18 failed to follow directive of courts in terms of
19 probation and supervised release. You threatened to
20 kill and shoot others, and you just don't -- you just
21 don't get a pass here, Mr. Pattinson.

22 So for all these factors, I've tried to
23 follow the policy statement which teaches you to look
24 sort of sequentially at the criminal history category.
25 Mr. Pattinson has a criminal history category four.

1 The courts also say you don't have to go through a
2 mechanistic formula, but you should say well, would
3 criminal history five better reflect the criminal
4 history or a six, and I believe in this case criminal
5 history at the top which is six is applicable, and
6 I've gone up two offense levels too from a 19 to a 21.
7 All this means is that range would be 77 to 96 months.
8 The Government has asked for a greater departure, but
9 the Court hereby after all these factors which I've
10 tried to articulate an upward departure of 96 months,
11 and that is the sentence I hereby impose upon you.
12 This is over three years more than the top of the
13 guideline range, but I think it's absolutely justified
14 in this case, sir. I mentioned Maya Angelou. You
15 might actually learn something by reading some of what
16 she has written. You claim in your letter to me that
17 you're going to take classes in jail, and I think
18 you've got a lot of things to deal with, anger
19 management frankly being one of them. So for the
20 reasons I said as I tried to articulate my feeling
21 here, I hereby commit the Stephen Pattinson to the
22 custody of the Bureau of Prisons and the Attorney
23 General for a period of 96 months. I depart -- I
24 grant the Government's motion and depart. When you
25 finish your bid, finish your sentence, I place you on

1 supervised release for a period of three years, and
2 these are most crucial, sir. If you show the same
3 disregard for these conditions, you're going to be
4 back in front of me or some other judge and you could
5 continue your stay in jail and your children will be
6 much, much older. While on supervised release in part
7 you can't possess, use, distribute any illegal drugs.
8 You can't possess a firearm or even a bullet. You
9 must submit to random drug testing and you must
10 cooperate in the collection of a DNA sample for the
11 probation office, and the presentence investigation
12 report listed several recommended special conditions.
13 I adopt most of them, specifically recommendation
14 number one that while on supervised release you
15 participate in a program for substance abuse including
16 testing and treatment according to the exact language
17 in that recommendation. I also direct recommendation
18 number two that you participate in a mental health
19 treatment program including a mental health evaluation
20 and treatment and comply with any program directed by
21 your probation officer according to the specific
22 language of this recommendation. You also -- I order
23 you to submit to a search of your person, property,
24 vehicle, place of residence to make sure you're
25 complying with these conditions and not possessing

1 guns or weapons. You must notify probation of any
2 opiate based pain medication before the prescription
3 is filled. Looking at the presentence report, you've
4 had history of drug abuse and use in your past, not so
5 much recently but in your past. Next, you must comply
6 -- and that's listed in paragraph 148 of the
7 presentence report. Next, you must comply with all
8 orders of protection issued against you and there have
9 been several. I've reviewed your financial
10 circumstances and I declined to impose a fine in this
11 case. I do -- I must order a \$100 special assessment
12 which is due immediately and will be withdrawn from
13 any monies you receive according to the Bureau of
14 Prisons financial responsibility program. There was
15 the firearms. There was a provision in the plea
16 agreement that they would be forfeited, and I ordered
17 that forfeiture. Those firearms will not be returned
18 to you or anyone else. Two --

19 MR. HARVEY: Your Honor, I'm sorry to
20 interrupt, but that forfeiture includes the shotgun
21 ammunition as well.

22 THE COURT: I thought I said that, but yes.
23 The shotgun and ammunition.

24 MR. HARVEY: Thank you.

25 THE COURT: Two other things. I don't think

1 there was another count on the indictment.

2 MR. HARVEY: There was not, Judge.

3 THE COURT: All right. I don't know, Mr.
4 Slawinski, if there's any recommendation that this man
5 serve his sentence in any particular locale.

6 MR. SLAWINSKI: Yes, Judge. As close to
7 Rochester as possible to maintain --

8 THE COURT: All right. I'll order -- or
9 I'll ask the Bureau of Prisons to do that, and of
10 course, it's up to the Bureau of Prisons. I should
11 say Mr. Pattinson will get credit for the time he has
12 been in custody. I think he lapsed in the federal
13 custody after the parole matter was taken care of in
14 Missouri. Next appeal on the plea agreement did
15 provide that Mr. Pattinson gave up or waived his right
16 to appeal if the sentence was within the guideline
17 range. This sentence obviously is not within the
18 guideline range, so he does have a right to appeal.
19 Mr. Slawinski, that appeal must be filed within 14
20 days of the judgment which will be when I sign the
21 document which will occur in a day or so. Can I trust
22 you to file the notice of appeal?

23 MR. SLAWINSKI: Of course, Judge.

24 THE COURT: All right. If not, certainly if
25 that doesn't happen and I'm sure it will, Mr.

1 Slawinski will do that, but if not, Mr. Pattinson, you
2 can ask the Court to make sure the appeal gets filed
3 and I will take care of that, but I have confidence in
4 Mr. Slawinski.

5 So Mr. Pattinson, this has not been a pretty
6 picture. You've shown yourself who you are and I
7 don't know, prison certainly can harden one's views,
8 but I have had some success stories where individuals
9 go in hardened, angry and bitter but the Bureau of
10 Prisons does have programs to make your future better.
11 You have no high school degree, no GED. You know,
12 your prospects for getting a job, which you don't have
13 now, are pretty slim. So it's up to you. You could
14 spend your time feeling sorry for yourself and in the
15 weight room or doing something positive. That's the
16 sentence. Thank you.

17 MS. FISH: Judge, if I may just clarify
18 briefly. The Court granted an upward departure for
19 inadequacy of criminal history from a category four to
20 a six. We went from a total offense level of 19 to a
21 22. I just want to clarify that as a variance under
22 the 3553A factors.

23 THE COURT: 19 to 21 is what I said.

24 MS. FISH: Sorry. I misread that. 19 to a
25 21, and that's a variance under the 3553A factors that

1 the Court detailed on the record.

2 THE COURT: That's what I did.

3 MS. FISH: Okay. Thanks, Judge.

4 (Proceeding concluded at 3:23 p.m.)

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1 CERTIFICATE OF COURT REPORTER

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3 I certify that this is a true and accurate
4 record of proceedings in the United States District
5 Court for the We stern District of New York before the
6 Honorable David G. Larimer on May 23, 2022.

7

8 S/ Brandi A. Wilkins

9 Brandi A. Wilkins

10 Official Court Reporter

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